

**MANDATE**

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

FDNY/BKNY

04-cv-4290

IRIZARRY

## MOTION INFORMATION STATEMENT

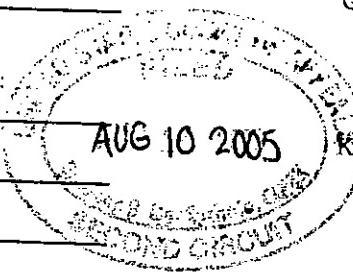
Caption [use short title]

Docket Number(s): 05-2172Motion for: WITHDRAWAL OF APPEAL

GERSTNER

U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORKV.  
KATZ

Set forth below precise, complete statement of relief sought:

PERMISSION TO WITHDRAW APPEAL.

2005 OCT 28 AM 10:48

**FILED**MOVING PARTY: DEFENDANT

- Plaintiff  
 Defendant  
 Appellant/Petitioner     Appellee/Respondent

OPPOSING PARTY: PLAINTIFFMOVING ATTORNEY: DEFENDANT

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY [Name]: LESLIE BEN-ZVI

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from:

HON. DORA L. IRIZARRY

Please check appropriate boxes:

Has consent of opposing counsel:

- A. been sought?  Yes  No  
 B. been obtained?  Yes  No

Is oral argument requested?

 Yes  No

(requests for oral argument will not necessarily be granted)

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND  
INJUNCTIONS PENDING APPEAL:Has request for relief been made below?  Yes  NoHas this relief been previously sought  
in this Court? Yes  No

Requested return date and explanation of emergency:

Date of appeal been set?  Yes  No  
Later date 10-17-2005

Signature of Moving Attorney:

Date: 08-08-2005Has service been effected?  Yes  No  
[Attach proof of service]

## ORDER

IT IS HEREBY ORDERED that the "motion" for permission to withdraw appeal is treated as a stipulation withdrawing the appeal, and it is SO ORDERED. While this Court does not encourage appellee requests for attorneys' fees where no briefing has occurred, appellee has a theoretical right to file a motion (as opposed to a mere Affirmation) seeking such relief.

A TRUE COPY  
Roseann B. MacKechnie, CLERK

FOR THE COURT

Roseann B. MacKechnie, Clerk of Court

By Stanley A. Bass

Stanley A. Bass, Staff Counsel

CERTIFIED: 10-25-05  
0-24-05